

CONSENT MEMORANDUM

PUBLIC BODIES ACT 2011: ABOLITION OF HM INSPECTORATE OF COURT ADMINISTRATION AND THE PUBLIC GUARDIAN BOARD

Consent Motion

1. To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012 , in accordance with the draft laid in Table Office on 14th May 2012 ”.

Background

2. This memorandum has been laid by Lesley Griffiths AM, Minister for Health and Social Services, in accordance with the arrangements agreed by Business Committee on 7th February 2012.

3. The above Motion is tabled to seek the agreement of the National Assembly for Wales (the “National Assembly”), in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make an Order for the abolition of HM Inspectorate of Court Administration and the Public Guardian Board. Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly in circumstances where an Order made under sections 1 to 5 of that Act makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly. In relation to the Order only those provisions relating to the Public Guardian Board fall within the competence of the National Assembly.

4. A copy of the Order was laid in Table Office on 14May 2012.

Summary of the Order and its Policy Objectives

5. The Order abolishes the Public Guardian Board (“the Board”) established under the Mental Capacity Act 2005 (“MCA”). The duty of the Board is to scrutinise and review the way in which the Public Guardian discharges his functions and to make appropriate recommendations to the Lord Chancellor. The functions conferred upon the Public Guardian are set out under section 58 of the MCA and include supervisory functions in relation to individuals who lack mental capacity for making decisions.

6. The Board consists of seven members who have been appointed because they have appropriate knowledge or experience in the areas of work covered by the Public Guardian. They have all been appointed for a period of up to four years. The Lord Chancellor is responsible for making appointments directly to the Board, and for its membership. It is to the Lord Chancellor that the Board reports. While the Office of the Public Guardian Agency Board has

a role in the overall management of the organisation, the Board is focused on monitoring and reporting on the work of the Public Guardian.

7. The decision to abolish the Board follows the outcome of the UK Government's 2010 review of public bodies. The intention following abolition of the Board is to replace the functions of the Board by strengthening governance arrangements within the Office of the Public Guardian, which exists as an executive agency of the UK Government.

Competence Issues

The Secretary of State proposes to make the Order pursuant to sections 1, 6 and 35 of the Public Bodies Act 2011. The Order would abolish the Board and make repeals and revocations associated with the abolition.

The National Assembly has legislative competence in relation to "mental capacity" (under Subject 9 (Health and Health Services) of Schedule 7; and Subject 15 (Social Welfare) of Schedule 7 to the Government of Wales Act 2006. It is the view of the Welsh Government that taking these subjects together that it is within the competence of the National Assembly to establish some form of regime which makes provision for the prevention, treatment and alleviation of mental disorder and/or for the protection of vulnerable persons. This competence is considered sufficiently broad enough to establish a board that is tasked with supporting and protecting the rights of individuals who have a mental disorder and to also establish a body which exercises similar functions to the Board in relation to Wales. To the extent that the National Assembly has the competence to create such a body, it would also have the power to abolish it.

It is the view of the Welsh Government, therefore, that the Order in abolishing the Board is legislating for a purpose which falls within the legislative competence of the National Assembly. For this reason, the consent of the National Assembly is sought pursuant to section 9(6) of the Public Bodies Act 2011, in so far as the Order makes provision to abolish the Board in relation to Wales.

This is a composite Order which also includes the abolition of the HM Inspectorate of Court Administration. However, only the Public Guardian Board falls within the legislative competence of the National Assembly for Wales.

Advantages of utilising this Order

It is the view of the Welsh Government that this Order represents the most appropriate and proportionate legislative vehicle to implement these proposals in Wales, so that the Board may be abolished at the earliest opportunity. We believe the Board has not met for some time and the Welsh Government has no objection to its abolition. Governance arrangements within the Office of the Public Guardian will be strengthened for the public benefit and in the

interests of ensuring Ministers and others continue to receive assurance over the way in which the Public Guardian discharges his duty.

Financial Implications

As the Board is funded entirely by the UK Government, there are no financial implications for Wales associated with this Order.

Lesley Griffiths AM
Minister for Health and Social Services